

**ASSEMBLY BILL**

**No. 1370**

**Introduced by Assembly Member Yee**

February 21, 2003

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An act to amend Sections 4094 and 4094.1 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, as introduced, Yee. Mental health: community treatment facilities: program standards: seclusion and restraints.

Under existing law, community treatment facilities are residential facilities that are licensed by the State Department of Social Services to provide mental health treatment services to children in a group setting, and that have the capacity to provide secure containment.

Existing law requires the State Department of Mental Health to adopt regulations establishing program standards for any facility licensed as a community treatment facility. Under existing law, these regulations are required to include, but not be limited to, program standards with respect to the placement of children with severe emotional disturbances, and to include standards for treatment staffing and for the use of psychotropic medication, discipline, and restraints in community treatment facilities.

This bill would, for a specified period of time, prohibit the department from adopting and enforcing regulations regarding the use of emergency interventions in community treatment facilities that are in addition to, or more stringent than, specified regulations applicable to the use of emergency interventions in group homes. The bill would also prohibit the department from requiring 24-hour onsite nursing staff at community treatment facilities that use emergency restraints, but

would require these facilities to retain at least one full-time registered nurse on staff, to maintain other nursing staff to be available on call, and to have present at all times at least one staff member who is trained in providing first aid and other emergency services. This bill would also authorize the department to adopt emergency regulations.

Existing law requires the State Department of Social Services and the State Department of Mental Health to jointly develop protocols for the oversight of community treatment facilities. Existing law also requires that these departments undertake specified actions with respect to training and education of facility management and staff, facility inspections, and reporting requirements.

This bill would provide that these requirements apply until they are superseded by another statute or by regulation. This bill would state the intent of the Legislature that the State Department of Social Services and the State Department of Mental Health, in consultation with various stakeholders, review existing reporting and training requirements related to the use of seclusion and restraints, as specified.

Existing law also requires the State Department of Mental Health and the State Department of Social Services to conduct bimonthly visits to licensed community treatment facilities to monitor operational progress and to provide technical assistance.

This bill would instead require these visits every 6 months.

Existing law requires the appropriate department to centrally review any certification or licensure deficiency before issuing a notice of the citation to the community care facility.

This bill would instead require both the State Department of Social Services and the State Department of Mental Health to centrally review the certification or licensing deficiency when licensing and certification field staff disagree on whether to issue a citation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The use of emergency interventions in out-of-home care  
4 facilities is required at times to restrain, or provide for the  
5 seclusion of, minors who are at risk for harming themselves, other  
6 minors who are residents of these facilities, or staff members of



1 these facilities. In foster care group homes, the use of restraints  
2 may include physically restraining a minor or providing a  
3 monitored “timeout” in an unlocked seclusion room.

4 (b) Existing regulations governing the use of emergency  
5 interventions adopted by the State Department of Mental Health  
6 require community treatment facilities that use emergency  
7 interventions to have 24-hour, onsite licensed nursing staff to  
8 monitor the use of seclusion and restraints. Foster care group  
9 homes are not required to maintain 24-hour licensed nursing  
10 coverage by the regulations applicable to the use of emergency  
11 intervention in group homes, as defined on January 1, 2002, in  
12 Subchapter 3 (commencing with Section 84300) of Chapter 5 of  
13 Division 6 of Title 22 of the California Code of Regulations. Yet,  
14 community treatment facilities are similar, in program content and  
15 client population, to rate classification levels 13 and 14 foster care  
16 group homes.

17 (c) Consistent with the goal of placing youth in foster care in  
18 the least restrictive environment possible, community treatment  
19 facilities were established to provide an alternative to placement  
20 in psychiatric institutions, state hospitals, or out-of-state facilities.

21 (d) The inconsistency in regulations governing the use of  
22 emergency interventions in group homes and in community  
23 treatment facilities creates a disincentive for small,  
24 community-based providers to treat severely emotionally  
25 disturbed youth in community treatment facility settings.

26 (e) As directed by Senate Resolution No. 31 of the 2001–02  
27 Regular Session, the Senate Select Committee on Developmental  
28 Disabilities and Mental Health will be conducting hearings  
29 regarding the standards, reporting practices, and oversight of the  
30 use of seclusion and restraints in psychiatric settings in California.  
31 The select committee has been directed to submit a report to the  
32 Legislature by March 1, 2003, regarding its findings and  
33 recommendations, including recommendations on how to develop  
34 best practices and reduce harm to staff and clients in group homes  
35 and psychiatric facilities.

36 (f) It is the intent of the Legislature to enact legislation to  
37 temporarily correct the inconsistency in how the use of emergency  
38 interventions is regulated in community treatment facilities,  
39 including group homes, until comprehensive state policies

1 regarding the use of emergency interventions are developed,  
2 proposed, and enacted by the Legislature.

3 SEC. 2. Section 4094 of the Welfare and Institutions Code is  
4 amended to read:

5 4094. (a) The State Department of Mental Health shall  
6 establish, by regulations adopted at the earliest possible date, but  
7 no later than December 31, 1994, program standards for any  
8 facility licensed as a community treatment facility. This section  
9 shall apply only to community treatment facilities described in this  
10 subdivision.

11 (b) A certification of compliance issued by the State  
12 Department of Mental Health shall be a condition of licensure for  
13 the community treatment facility by the State Department of  
14 Social Services. The department may, upon the request of a county,  
15 delegate the certification and supervision of a community  
16 treatment facility to the county department of mental health.

17 (c) The State Department of Mental Health shall adopt  
18 regulations to include, but not be limited to, the following:

19 (1) Procedures by which the Director of Mental Health shall  
20 certify that a facility requesting licensure as a community  
21 treatment facility pursuant to Section 1502 of the Health and  
22 Safety Code is in compliance with program standards established  
23 pursuant to this section.

24 (2) Procedures by which the Director of Mental Health shall  
25 deny a certification to a facility or decertify a facility *that is*  
26 licensed as a community treatment facility pursuant to Section  
27 1502 of the Health and Safety Code, but no longer complying with  
28 program standards established pursuant to this section, in  
29 accordance with Chapter 5 (commencing with Section 11500) of  
30 Part 1 of Division 3 of Title 2 of the Government Code.

31 (3) Provisions for site visits by the State Department of Mental  
32 Health for the purpose of reviewing a facility's compliance with  
33 program standards established pursuant to this section.

34 (4) Provisions for the community care licensing staff of the  
35 State Department of Social Services to report to the State  
36 Department of Mental Health when there is reasonable cause to  
37 believe that a community treatment facility is not in compliance  
38 with program standards established pursuant to this section.

39 (5) Provisions for the State Department of Mental Health to  
40 provide consultation and documentation to the State Department



1 of Social Services in any administrative proceeding regarding  
2 denial, suspension, or revocation of a community treatment  
3 facility license.

4 (d) The standards adopted by regulations pursuant to  
5 subdivision (a) shall include, but not be limited to, standards for  
6 treatment staffing and for the use of psychotropic medication,  
7 discipline, and ~~restraint~~ restraints in the facilities. The standards  
8 shall also meet the requirements of Section 4094.5.

9 (e) *Pending the enactment of legislation resulting from the*  
10 *report on seclusion and restraint to be completed by the Senate*  
11 *Select Committee on Developmental Disabilities and Mental*  
12 *Health pursuant to Senate Resolution No. 31 of the 2001–02*  
13 *Regular Session, or until January 1, 2005, whichever occurs first,*  
14 *all of the following are applicable:*

15 (1) *For purposes of the use of emergency interventions in any*  
16 *community treatment facility, the State Department of Mental*  
17 *Health shall not adopt or enforce regulations that are in addition*  
18 *to, or more stringent than, the regulations applicable to the use of*  
19 *emergency interventions in group homes, as defined on January 1,*  
20 *2002, in Subchapter 3 (commencing with Section 84300) of Title*  
21 *22 of the California Code of Regulations.*

22 (2) *Notwithstanding paragraph (1):*

23 (A) *A community treatment facility that uses emergency*  
24 *interventions shall not be required by the State Department of*  
25 *Mental Health to have 24-hour onsite licensed nursing staff, but*  
26 *must retain at least one full-time registered nurse on staff.*

27 (B) *Other nursing staff shall be available on call to provide*  
28 *nursing services, when necessary, within one hour.*

29 (C) *Nursing services shall include, but not be limited to,*  
30 *conducting physical assessments, administering medication,*  
31 *monitoring for side effects of medication, taking vital signs, and*  
32 *providing nursing guidance for observation of children to other*  
33 *facility staff.*

34 (D) *At least one staff member who is trained in first aid,*  
35 *cardiopulmonary resuscitation, and professional assault response*  
36 *training (PARTS) or other similar training program shall be*  
37 *present at all times.*

38 (3) *The State Department of Mental Health may adopt*  
39 *emergency regulations as necessary to implement this subdivision.*  
40 *The adoption of these regulations shall be deemed to be an*

1 *emergency and necessary for the immediate preservation of the*  
2 *public peace, health and safety, and general welfare. The*  
3 *regulations shall be exempt from review by the Office of*  
4 *Administrative Law and shall become effective immediately upon*  
5 *filing with the Secretary of State. The regulations shall not remain*  
6 *in effect more than 180 days unless the adopting agency complies*  
7 *with all the provisions of Chapter 3.5 (commencing with Section*  
8 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*  
9 *as required by subdivision (e) of Section 11346.1 of the*  
10 *Government Code.*

11 (f) During the initial public comment period for the adoption of  
12 the regulations required by this section, the community care  
13 facility licensing regulations proposed by the State Department of  
14 Social Services and the program standards proposed by the State  
15 Department of Mental Health shall be presented simultaneously.

16 ~~(f)~~

17 (g) A minor shall be admitted to a community treatment facility  
18 only if the requirements of Section 4094.5 and either of the  
19 following conditions is met:

20 (1) The minor is within the jurisdiction of the juvenile court,  
21 and has made voluntary application for mental health services  
22 pursuant to Section 6552.

23 (2) Informed consent is given by a parent, guardian,  
24 conservator, or other person having custody of the minor.

25 ~~(g)~~

26 (h) Any minor admitted to a community treatment facility shall  
27 have the same due process rights afforded to a minor who may be  
28 admitted to a state hospital, pursuant to the holding in *In re Roger*  
29 *S.* (1977) 19 Cal. 3d 921. Minors who are wards or dependents of  
30 the court and to whom this subdivision applies shall be afforded  
31 due process in accordance with Section 6552 and related case law,  
32 including *In re Michael E.* (1975) 15 Cal.3d 183. Regulations  
33 adopted pursuant to Section 4094 shall specify the procedures for  
34 ensuring these rights, including provisions for notification of  
35 rights and the time and place of hearings.

36 ~~(h)~~

37 (i) Notwithstanding Section 13340 of the Government Code,  
38 the sum of forty-five thousand dollars (\$45,000) is hereby  
39 appropriated annually from the General Fund to the State

1 Department of Mental Health for one personnel year to carry out  
2 the provisions of this section.

3 SEC. 3. Section 4094.1 of the Welfare and Institutions Code  
4 is amended to read:

5 4094.1. (a) (1) The department and the State Department of  
6 Social Services, in consultation with community treatment  
7 providers, local mental health departments, and county welfare  
8 departments, shall develop joint protocols for the oversight of  
9 community treatment facilities.

10 (2) Subject to subdivision (b), until the protocols and  
11 regulatory changes required by paragraph (1) are implemented,  
12 entities operating community treatment facilities shall comply  
13 with the current reporting requirements and other procedural and  
14 administrative mandates established in State Department of  
15 Mental Health regulations governing community treatment  
16 facilities.

17 (b) In accordance with all of the following, the State  
18 Department of Social Services shall modify existing regulations  
19 governing reporting requirements and other procedural and  
20 administrative mandates, to take into account the seriousness and  
21 frequency of behaviors that are likely to be exhibited by children  
22 placed in community treatment facilities. The modifications  
23 required by this subdivision shall apply for the entire 2000–01  
24 fiscal year.

25 ~~(1)–year and thereafter until they are superseded by the~~  
26 ~~subsequent enactment of statutory or regulatory changes.~~

27 *(1) In order to ensure adequate oversight and protection of*  
28 *children in community treatment facilities, it is the intent of the*  
29 *Legislature that the State Department of Mental Health and the*  
30 *State Department of Social Services, in consultation with*  
31 *community treatment facility providers and stakeholders, review*  
32 *existing reporting requirements related to the use of seclusion and*  
33 *restraints in community treatment facilities to ensure that they are*  
34 *clear and consistent between community treatment facility*  
35 *providers and enforcement agencies in order to collect data on,*  
36 *and accurately report on the use and usefulness of, seclusion and*  
37 *restraints in community treatment facilities.*

38 (2) Notwithstanding existing regulations, the State Department  
39 of Social Services shall issue alternative training and education  
40 requirements for community treatment facility managers and staff,



1 which shall be developed in consultation with the State  
2 Department of Mental Health, patients' rights advocates, local  
3 mental health departments, county welfare offices, and providers.

4 ~~(2)–~~

5 *(3) In order to ensure adequate oversight and protection of*  
6 *children in community treatment facilities, it is the intent of the*  
7 *Legislature that the State Department of Mental Health and the*  
8 *State Department of Social Services, in consultation with*  
9 *community treatment facility providers and stakeholders, review*  
10 *existing training requirements related to the use of seclusion and*  
11 *restraints on children in community treatment facilities to ensure*  
12 *that the training requirements protect and promote the health of*  
13 *those children. Training requirements should include training in*  
14 *the use of interventions for reducing the risk of death or other*  
15 *adverse outcomes resulting from prone containment. Training*  
16 *requirements should also include a requirement that an observer*  
17 *of every prone containment restraint situation rapidly move a*  
18 *patient into a safer, face up position as quickly as possible if any*  
19 *signs of distress are detected. In addition, the training*  
20 *requirements should include training in the avoidance of direct*  
21 *pressure to the patient's neck or chest, and consideration of*  
22 *medications and changes in cardiopulmonary functioning, all of*  
23 *which should be stressed as critical components of a training*  
24 *protocol for the use of seclusion and restraints.*

25 *(4) The department and the State Department of Social*  
26 *Services shall conduct joint ~~bimonthly~~ visits to every six months*  
27 *to each licensed community treatment facilities facility to monitor*  
28 *operational progress and to provide technical assistance.*

29 ~~(3)–The appropriate~~

30 *(5) When the licensing and certification field staff disagree on*  
31 *whether to issue a citation, both the State Department of Social*  
32 *Services and the department shall centrally review ~~any~~ the*  
33 *certification or ~~license~~ ensure licensing deficiency before ~~notice~~ of the*  
34 *citation is issued to the community care facility.*

35 ~~(4)–~~

36 *(6) A community treatment facility shall be exempt from*  
37 *reporting any occurrence of the use of ~~restraint~~ restraints to the*  
38 *State Department of Social Services, unless physical injury is*



- 1 sustained or unconsciousness or other medical conditions arise
- 2 from the restraint. All other reporting requirements shall apply.

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